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512-5090-7525
Coca-Cola Enterprises-North 518-4050-6700
Case 5-CA-22615

This Section 8(a)(3) and (1) charge is submitted for advice as to: (1) whether the Employer maintained and enforced an unlawful union-security clause in its collective-bargaining agreement; and (2) whether the Employer violated the Act by terminating an employee solely because he refused to comply with the Employer's demand that he "join the union."

We conclude that a Section 8(a)(3) and (1) complaint should issue, absent settlement, alleging that: (1) the Employer violated the Act by maintaining and enforcing an unlawful union-security clause in its collective-bargaining agreement with United Food and Commercial Workers, Local 27;[1] and (2) the Employer violated the Act by terminating the employee because he refused to comply with the Employer's demand that he "join the Union", where the demand and its context suggested to the employee that what was being required was something other than the payment of regular dues and fees.

With respect to the first issue, we conclude that the issue of the lawfulness of the union-security clause, requiring and explaining "membership in good standing", should be put to the Board. The National Labor Relations Board recently promulgated proposed rules [2] regarding the enforcement of the Supreme Court's decision in Communications Workers v. Beck. [3] In the proposed rules, the Board stated:

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[1] This union-security clause, Article 2, reads as follows: All present employees who are members of the Union on the effective date of the Agreement shall remain members of the Union as a condition of continued employment, and all present employees who are hired thereafter, shall on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of the Agreement, whichever is the later, become and remain members in good standing in the Union as a condition of employment. For the purpose of the Agreement, payment of initiation fees and dues shall constitute membership in good standing.

[2] "Union Dues Regulations", 29 CFR Part 103, Federal Register, Volume 57, No. 184, Tuesday, September 22, 1992.

[3] 487 U.S. 735 (1988).

> Section 103.42, Model union security clause.
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> Purpose. The Board determines, in accordance with Section 103.40(a), that the promulgation of a model union security clause would facilitate the ability of a labor organization to fulfill its duty of fair representation to employees by clarifying for such employees the requirements of the Act as interpreted by the Supreme Court in NLRB v. General Motors Corp., 373 U.S. 734 (1963), CWA v. Beck, 487 U.S. 735 (1988), and related cases. The model union security clause set forth in the Appendix to this section supersedes all previous such model clauses announced by the Board, including that promulgated in Keystone Coat, Apron, and Towel Supply Co., 121 NLRB 880 (1958). This announcement does not affect Paragon Products Corp., 134 NLRB 662 (1961).

Thus, in these rules the Board proposes to overturn its decision, and the model union security clause, set forth in Keystone Coat, Apron, and Towel Supply Co.. In addition, the Board states that the proposed rules do not affect its decision in Paragon Products Corp.. However, the Board has traditionally read Keystone and Paragon together. It is now unclear, how the Board would apply Paragon in light of the language in the new model union security clause in the proposed rules. Therefore, the union security clause in this case should be presented to the Board, so that the Board will have an opportunity to specifically consider whether the "membership in good standing" requirement, as explained, is lawful.

With respect to the second issue, we conclude that the Employer violated the Act by terminating the employee because he refused to comply with the Employer's demands that he "join the Union" where the demands and their context reasonably suggested to the employee that what was being required was something other than the payment of regular dues and initiation fees.[4]

Where an employee pays the dues and initiation fee required under a union-security clause, an employer that discharges or a union that seeks to discharge the employee for failure to obey some additional union-imposed obligation, such as taking a membership oath or signing a membership card, violates Section 8(a)(1) and (3) and

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[4] Of course these Employer statements themselves violated Section 8(a)(1) for the reasons set forth below.

8(b)(1)(A) and (2) respectively. [5] Likewise, a union or an employer violates Section 8(b)(1)(A) or Section 8(a)(1) respectively if it notifies an employee that he is required to become a member of the union and indicates that something other than the payment of regular dues and initiation fees is required.[6] This is a violation even if the collective-bargaining agreement requires only the payment of agency fees and the employee had access to that agreement.[7]

However, an employer that discharges or a union that seeks to discharge an employee for failure to comply with the dues obligations of union membership does not violate the Act. [8] And, where a union informs an employee that he must become a "member", and neither the statement itself nor its context suggests that what is being required is something other than the payment of regular dues and the initiation fee, there is no violation.[9] Thus, as the Supreme Court stated in NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963):

> It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues. "Membership" as a condition of employment is whittled down to its financial core.

In the instant case, we conclude that the Employer violated Section 8(a)(3) and (1) of the Act by terminating the employee because he refused to comply with the Employer's unlawful demands that he "join the Union", because the demands and their context would reasonably suggest to the employee that what was being required was

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[5] Union Starch & Refining Co., 87 NLRB 779 (1949), enfd. 186 F.2d 1008 (7th Cir. 1951); Hershey Foods Corp, 207 NLRB 897 (1973), enfd. 513 F.2d 1083 (9th Cir. 1975).

[6] See United Stanford Employees, Local 680 (Leland Stanford Junior University), 232 NLRB 326, n. 1, 328-329, 333 (1977) (new employees were told that they had to become members of the union and that "membership" included the signing of a membership card and the taking of a membership oath, in addition to the payment of fees and dues).

[7] Leland Stanford, 232 NLRB at 329.

[8] NLRB v. General Motors Corp., 373 U.S. 734 (1963).

[9] See I.B.I. Security, Inc., 292 NLRB 648, 649, 655-56 (1989) (distinguishing Hershey Foods, where the discharged employee had continued to tender dues, despite his resignation from membership, so that it was reasonable to infer that the union was improperly seeking discharge for reasons other than non-payment of dues). The Board in I.B.I. upheld, without discussion, the ALJ's finding that the statements that the employee must become a "member" did not themselves violate the Act. This is consistent with Leland Stanford, supra, in that the statements in I.B.I. would not reasonably have been understood to require anything more than the payment of union dues and initiation fees. See also Big Rivers Electric Corp., 260 NLRB 329, 331, n. 3, n.5, 334 (1982).

something other than the payment of regular dues and initiation fees. First, the Employer told the discriminatee that his current job would be eliminated and that he had to join the Union or he could not work at the Baltimore facility. Second, when the employee explained to the Employer that he did not want to join the Union but did want to continue working for the Employer, the Employer further stated that there were no assignments available for the employee at the Employer's non-union operation and after the employee stated that he would not join the Union, the Employer responded that he considered the employee to have quit. The Employer also stated that the Baltimore operation was a "closed shop" and that the employee had to join the Union in order to work there. The Employer then terminated the employee. The Employer never indicated to the employee that he could satisfy his union security obligations without joining the Union as a full member and could instead simply pay periodic dues and the initiation fee.[10] In fact, neither the Employer nor the Union gave the employee an opportunity to see the contract. Therefore, in the context of the Employer's statements, the employee would reasonably think that there were no alternatives to full Union membership. Also, we note that there was no indication that the employee would be unwilling to pay initiation fees and dues if someone had informed him that this was an alternative. Under the circumstances of this case, we conclude that the Employer's termination of the employee because he refused to comply with the Employer's demands that he join the Union was unlawful since these demands unlawfully indicated that the employee was being required to do something other than the payment of regular dues and the initiation fee. Therefore, a Section 8(a)(3) and (1) complaint should issue, absent settlement, on this basis.

R.E.A.

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[10] [*FOIA Exemption 5*

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